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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	No.	01-30923 DM
PACIFIC GAS & ELECTRIC COMPANY,	)	Chapter	11
Debtor.	)	Date:	July 13, 2001
	)	Time:	1:00 p.m.
	)	Ctrm:	Hon. Dennis Montali
	)		235 Pine Street, 22 nd Floor
	)		San Francisco, California

UNITED STATES TRUSTEE'S
OBJECTION TO CREDITORS' COMMITTEE'S APPLICATION
TO EMPLOY ROGERS & ASSOC. AS PUBLIC RELATIONS
AND PUBLIC AFFAIRS CONSULTANTS

Linda Ekstrom Stanley, United States Trustee, submits this objection to the application of the Official Committee of Unsecured Creditors (the "Committee") to employ Rogers & Associates, a public relations firm (the "Application"). The Committee has failed to meet its burden of proving why, in a case which debtor has repeatedly described as promising "full payment" to creditors, employing a public relations firm at the estate's expense is necessary for the Committee to fulfill its specific statutory obligations.

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ARGUMENT

I. THE UNITED STATES TRUSTEE HAS STANDING TO SUBMIT THIS OBJECTION

The United States Trustee is responsible for, *inter alia*, supervising "the administration of cases . . . under chapter . . . 11" of the Code and is given discretion to file comments with the court with respect to applications for employment of professional persons. 28 U.S.C. § 586(a)(3).

II. THE COMMITTEE MAY EMPLOY PROFESSIONALS, BUT BEARS THE BURDEN OF PROVING THE NECESSITY OF THE PROPOSED EMPLOYMENT

A. The Bankruptcy Code Permits a Committee to Employ Professionals to Assist it In Carrying Out Its Duties Under § 1103(c)

Section 1103 authorizes a creditors' committee to employ bankruptcy professionals. 11 U.S.C. § 1103(a) ("such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.")

The committee's authorization to employ in § 1103(a) should be circumscribed by the committee's duties. Section 1103(c) enumerates a committee's duties:

A committee appointed under section 1102 of this title may -

(1) consult with the trustee or debtor in possession concerning the administration of the case;

(2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;

(4) request the appointment of a trustee or examiner under section 1104 of this title; and

(5) perform such other services as are in the interest of those represented.

11 U.S.C. § 1103)(c). These duties are not boundless. They are carefully limited to

oversight of a debtor's conduct in chapter 11.

B. The Committee Bears the Burden of Demonstrating A Professional's Employment Is "Necessary"

Bankruptcy Rule 2014 mandates the committee show proposed employments are necessary on the facts of the case:

An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee

Fed. R. Bankr. P. 2014(a) (emphasis added).

Collier makes clear that while they should defer to the selection of a professional, both the Court and the United States Trustee must evaluate the necessity of the proposed employment:

Neither section 1103(a) nor Rule 2014 provide any guidance as to the criteria to be applied in determining whether to approve such retention. The United States trustee and the court will typically focus on two questions: First, is it appropriate for the committee to retain a professionals of the particular type that the committee seeks to employ? Second, should the particular professional selected by the committee be approved? There is a strong public policy in bankruptcy in favor of permitting parties to retain professionals of their choice. Accordingly, neither the United States trustee nor the court should generally second guess the committee's choice They will, however, want to make an independent determination as to whether it is necessary and appropriate for a committee to hire the particular type of professional involved.

7 L. King, COLLIER ON BANKRUPTCY ¶ 1103.03[2][a][iii] at 1103-10-11 (15th ed. rev. 2001) (emphasis added); see also *Elstead v. Nolden (In re That's Entertainment Marketing Group*,

1 *Inc.*), 168 B.R. 226, 229 (N.D. Cal. 1994) ("Section 327 of the Bankruptcy Code
2 "Employment of Professional Persons," and Bankruptcy Rule 2014 require court approval
3 before a "professional person" may be hired by the trustee. The purpose of § 327 is to
4 insure in advance both that the person's employment is necessary to the estate and that the
5 person employed is disinterested and able to serve the best interests of the estate. (*citing*
6 *In re Cormier*, 35 B.R. 424 (D. Me. 1981)).
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8 **III. THE COMMITTEE HAS SUBMITTED NO PROOF OF THE NECESSITY OF THE**
9 **PROPOSED EMPLOYMENT AND IS NOT ENTITLED TO AN ORDER OF**
10 **EMPLOYMENT FOR ROGERS & ASSOCIATES**

11 The Application does not contain any justification whatsoever for the employment of
12 a public relations firm. Imagining there is justification is hard. It is not debtor (perhaps a
13 natural recipient of public relations talent), but the committee which seeks to employ a
14 public relations firm.

15 Parties in interest should not be required to conjure up the circumstances in which
16 the proposed employment would make sense. The Committee makes no effort to describe
17 how employing a public relations firm will assist it in carrying out its specific duties under 11
18 U.S.C. § 1103. A committee's duties are broad but directed. Congress geared them to
19 understanding the nature of the debtor's financial and legal problems and the advisability of
20 allowing the business to continue and whether an independent fiduciary should be
21 appointed. The committee does not allege the firm will help it evaluate debtor's business or
22 determine whether a trustee is warranted. It is impossible to justify a public relations firm
23 given the limited range of the Committee's statutory duties.

24 As a preliminary matter, it is questionable what role a public relations firm should play
25 at this juncture in the case. Section 1125 would not permit the Committee to solicit
26 acceptances of a plan until a disclosure statement had been approved:

27 (b) An acceptance or rejection of a plan may not be solicited
28 after the commencement of the case under this title from a
holder of a claim or interest with respect to such claim or
interest, unless, at the time of or before such solicitation, there is
transmitted to such holder the plan or a summary of the plan,
and a written disclosure statement approved, after notice and a

1 hearing, by the court as containing adequate information. The
2 court may approve a disclosure statement without a valuation of
3 the debtor or an appraisal of the debtor's assets.

4 There is no approved disclosure statement nor any plan, so what form communication
5 would take is difficult to imagine.

6 Debtor's financial position does support the proposed employment, either. While
7 debtor may be in chapter 11, it steadfastly maintains all creditors will be paid 100% of their
8 allowed claims. The promise of payment in full from a bankruptcy estate suggests most
9 creditors will be elated. A committee's traditional blessing of a negotiated plan and
10 reference to that plan in a disclosure statement should suffice.

11 If the Committee, in fact, is seeking the public's approval of its actions, the
12 application should be denied on that ground alone. The Committee's constituency is not
13 the public, but creditors of the estate.

14 No "public relations" should be necessary in connection with the submission of
15 claims. Debtor drafted an extensive notice of procedure for the filing of claims and has
16 obtained a "Case Management Order" detailing these requirements. There is no purpose
17 for a public relations team in this effort.

18 Most important, the Committee does not demonstrate why the voices of its members,
19 its chairpersons and its lawyers are insufficient to the task of communication with creditors.
20 These professionals and committee representatives need not filter information meant for
21 creditor consumption through "public relations" and, potentially, "spin." Creditors are entitled
22 to the unvarnished truth from the Committee.

23 This case requires assiduous attention to facts and legal matters. It does not require
24 a public relations firm generating publicity and information strained for public consumption.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the application should be denied.

3 Date: July 5, 2001

Respectfully submitted,

4 Patricia A. Cutler
5 Assistant United States Trustee

6 By:

7 _____
8 Stephen L. Johnson
9 Attorneys for United States Trustee